

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FAXED
11/4/02

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IN RE

VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION

MEMORANDUM DECISION

96-CV-5238 (JG/RLM)

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This Document Relates To:
All Actions

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

On June 11, 2002, non-party Dow Jones and Company, Inc. ("Dow Jones") filed with the District Court a Motion to Intervene and Unseal Court Records in these consolidated actions. Specifically, Dow Jones sought disclosure of the court records relating to the parties' pending motions for summary judgment. In open court on June 21, 2002, and in an order dated June 24, 2002, Judge Gleeson ordered that all documents filed with the Court be unsealed unless, by July 9, 2002, the undersigned magistrate judge received applications to maintain certain documents or portions of documents under seal, describing the reasons for each such request. Following the grant of several extensions of time, the parties, as well as various non-parties, filed applications to maintain numerous portions of the record under seal.

For the reasons that follow, this Court hereby grants in part and denies in part the pending applications for continued confidentiality.

BACKGROUND

In this antitrust action, several of the nation's largest retailers, joined by a number of smaller merchants and three retail associations (collectively referred to herein as "plaintiffs"), challenge rules issued by defendants Visa U.S.A. Inc. ("Visa") and MasterCard International

Fisher may not be redacted.

W. App. Tab 12: The internal financial document may be redacted in the manner proposed by Wal-Mart. The legal document may not.

W. App. Tab 13: The internal documents may be redacted as proposed by Wal-Mart.

W. App. Tab 14: The internal memoranda may be redacted as proposed by Wal-Mart. The legal documents may not be redacted, except for the specific incentive figure allegedly offered by Visa to Wal-Mart.

W. App. Tab 23: The proposed redactions to the one-page excerpt from a declaration of a defense expert are approved.

W. App. Tab 25: The proposed redactions are approved, except that on page 69, only the incentive amount may be redacted.

W. App. Tab 27: The deposition transcript may be redacted in the manner proposed by Wal-Mart.

2. Unreliable Information

Wal-Mart contends that a series of charts submitted by defendants in connection with either the pending dispositive motions or defendants' unsuccessful opposition to class certification should be maintained under seal because the materials contain unreliable and misleading information. See 7/16/02 Shapiro Letter at 7-8. While the Second Circuit did observe, in Amodeo II, 71 F.3d at 1051, that "[l]aw, unverified information should not be as readily disclosed as matters that are verified," courts were urged to consider "whether the nature of the materials is such that there is a fair opportunity for the subject to respond to any accusations contained therein." Id. Here, plaintiffs have had ample opportunity to respond

265 line 14 through page 268 reveals information that could be described as competitively sensitive. Therefore, that more limited portion may be redacted.

CONCLUSION

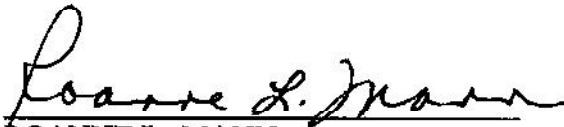
For the foregoing reasons, and to the extent detailed in this opinion, the various applications to maintain specified portions of the record under seal are granted in part and denied in part.

Any objections to the foregoing rulings must be filed with Judge Gleeson by November 7, 2002. By November 12, 2002, the parties shall deliver to Chambers, for public filing in the Clerk's Office, redacted copies of those documents that the Court has ruled shall be made part of the public record in redacted form; each such document shall be marked on the first page with the docket sheet document number corresponding to that document. To the extent that any objections to these rulings have been filed with Judge Gleeson, the copies delivered to Chambers shall redact any portions of the documents that are the subject of a pending objection.

The Clerk is directed to transmit copies of this opinion, by facsimile, to all counsel of record, to counsel for those non-parties who have applied for continued sealing of portions of the record, and to counsel for Dow Jones.

SO ORDERED.

Dated: Brooklyn, New York
November 4, 2002


ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE